

State of Washington
MARINE EMPLOYEES' COMMISSION

WHAT YOU SHOULD KNOW ABOUT THE MARINE EMPLOYEES' COMMISSION

Chapter 47.64 RCW

Title 316 WAC

Marine Employees' Commission
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Henry L. Chiles, Jr., Chairman

John P. Sullivan, Commissioner

David E. Williams, Commissioner

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THE WASHINGTON STATE MARINE EMPLOYEES' COMMISSION

The purpose of the Marine Employees' Commission is to: adjudicate all complaints, grievances and disputes between labor and management arising from ferry system operations; provide impasse mediation; investigate charges of unfair labor practices; determine bargaining units; conduct fact-finding studies and salary surveys; provide for the selection of impartial arbitrators; **certify** fair representation organizations; and determine whether labor agreements exceed statutory limitations and order reductions accordingly.

The goal is to provide the **specialized** attention required to resolve the unique and complex labor relations questions that arise **in** the operation of the Washington State Ferry System.

The Commissions' objective is to ensure that the operation of the ferry system is not disrupted by labor disputes.

The Marine Employees' Commission has had a long history of working with ferry employees. AU of the Commissioners are trained administrative law judges. The three Co**mmissioners** and two staff work part-time.

The Washington State Ferries operates 24 hours a day, seven days a week. Disputes need to be resolved quickly. There has been labor peace within the system since 1981.

The **Washington** State Ferry System is the nation's largest ferry fleet. It is the second largest fleet of vessels under the U.S. Flag. The WSF carries more than 23 million passengers each year, which is more **than Amtrak** Railroad carries nationwide.

The WSF is very important to transportation, tourism and the overall economy of the **Puget** Sound area. The Marine Employees' Commission helps ensure that there is no disruption to the system.

If you have any questions, please call (360) **586-6354** and we will be glad to assist you

Commissioners:

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Chapter 47.64 Revised Code of Washington

Chapter 47.64 RCW is the state law which sets forth labor relations policy between the Washington State Ferries and labor organizations representing Washington state ferry employees. The law's declared purpose is to provide efficient, safe, reliable and reasonably priced ferry service, uninterrupted by strikes or work stoppages and to protect the rights of state ferry employees to organize and bargain collectively. The Marine Employees'-Public Employment Relations Act declares that sound labor relations are essential to the development of a ferry system which will best serve the interests of the people of the State of Washington.

Title 316 Washington Administrative Code

Title 316 WAC is the Rules of Procedure which govern the Marine Employees' Commission.

THE MARINE EMPLOYEES' COMMISSION

In 1983, the **Washington** State Legislature established the Marine Employees' Commission (MEC) to protect the rights prescribed by Chapter 47.64 **RCW** -- rights of employers, employees, labor organizations, and the public as **well**. The three-member Commission resolves grievance disputes, investigates and decides unfair **labor** practices cases, determines questions concerning representation, and provides a biennial salary survey to the parties to collective bargaining. The MEC staff is located in Olympia.

Who is covered by Chapter 47.64. RCW?

Chapter 47.64 RCW covers disputes between employees of the Washington State Ferry System (**WSF**) and their bargaining representatives and WSF management.

Disputes handled by the Marine Employees' Commission

The MEC handles different kinds of cases. Certain collective bargaining agreements between the WSF and ferry employee **organizations** name the Marine Employees' **Commission** as the arbitrator of grievances unresolved by the union and the Washington State Ferries. A union or the ferry system may file a grievance with the MEC which after exhausting all contractual dispute resolution steps. The MEC also investigates and resolves unfair labor practice complaints. A **union or** the ferry system may contend that the other is unlawfully refusing to bargain with it for a new contract. An individual ferry system employee may allege that the union is not representing him or her fairly.¹

¹ Other dispute resolution mechanisms provided in the law include: (1) questions concerning representation; (2) questions concerning unit **clarification**; (3) resolution of impasse in interest arbitration; and (4) union security disputes. MEC also prepares a biennial salary survey. These topics are discussed later in this document.

GRIEVANCE ARBITRATION

A grievance is a formal statement which alleges an injury, injustice or violation of rights granted by rule, statute or collective bargaining agreement.

The parties 'to the collective bargaining agreements must follow and exhaust grievance procedures provided in the appropriate collective bargaining agreement. If a contract does not provide for the resolution of grievances, Chapter **316-65** Washington **Administrative** Code (WAC) guides the proceedings. A grievance may be **filed** by the ferry system, a labor union representative or under certain circumstances, by a state ferry system employee. An arbitrator's decision on a grievance cannot change or amend the terms, conditions, or applications of the **collective bargaining** agreement.

MEC encourages WSF employees to seek the assistance of their union representatives to utilize dispute resolution procedures provided in the appropriate collective bargaining agreements. MEC staff may be able to help you with questions concerning appropriate contract procedures.

UNFAIR **LABOR PRACTICE** CHARGES

RCW **47.64.130(1)** defines the following acts by the Washington State Ferries would constitute an unfair labor practice:

- (a) To interfere with, restrain, or coerce employees in the exercise 'of the rights guaranteed by this chapter;
- (b) To dominate or interfere with the formation or administration of any employee **organization** or contribute **financial** or other support to it: Provided, That subject to rules made by the commission pursuant to RCW 47.64280, an employer shall not be prohibited from **permitting** employees to confer with it or its representatives or agents during working hours without loss of time or pay
- (c) To encourage or discourage membership in any employee **organization** by **discrimination** in regard to hiring, tenure of employment, or any term or condition of employment, but nothing contained in this subsection prevents an employer from requiring, as a condition of continued employment, payment of periodic dues and fees uniformly required to an exclusive bargaining representative pursuant to RCW **47.64.160**: Provided, That nothing prohibii ferry system management from agreeing to obtain employees by referral from a lawful hiring hall operated by or participated in by a labor organization;
- (d) To discharge or otherwise disaiminate against an employee because he has filed charges or given testimony under this chapter;
- (e) To refuse to bargain collectively with the representatives of its employees.

Under section **47.64.130(2)** RCW, a union or its agent may commit an unfair labor practice if **it**:

(a) Restrains or coerces employees (i) in the exercise of rights guaranteed by this chapter: Provided, That this paragraph does not impair the right of an employee organization to prescribe its own rules with respect to the acquisition or retention of membership therein, or (ii) an employer in the selection of his representatives for the purpose of collective bargaining or the adjustment of grievances;

b) To cause or attempt to cause an employer to discriminate against an employee in violation of subsection (1)(c) of this section;

(c) To refuse to bargain collectively with an employer, when it is the representative of its employees subject to RCW 47.64.170.

DETERMINING THE APPROPRIATE DISPUTE MECHANISM

You must determine whether it will be necessary for you to **file** a complaint charging unfair labor practices or to resolve your dispute by use of grievance procedures provided in a union contract. Of course, the MEC is always available to you if you seek information concerning your questions about how to file a case.

MEC staff may not give you **legal** advice. Nor may the MEC give advisory opinions with respect to the legality of particular conduct or of clauses in a contract. If you have any such questions, you should consult an attorney.

If you are **in** doubt as to **whether** your case is properly **before** the MEC, you should seek **assistance** of **MEC staff**.

The Act does not cover **all management-labor problems**

It is important for you to understand that the **MEC** remedies only the grievances and unfair labor practice charges defined in Chapter 47.64 RCW. It does not cover every single dispute that you might have, nor is it applicable to all labor disputes in which you might be involved. Some of disputes may be covered by other statutes.

RESOLUTION OF A DISPUTE

Who may file a case?

A case may be **filed** by WSF, a union, or a WSF employee. It must be **filed** in writing with the MEC office **in** Olympia.

Forms

- **Request for grievance arbitration**
- **Unfair labor practice complaint**

MEC has forms to assist **you** in bringing a dispute before the Commission. Upon request, **MEC** staff will send you these forms, as well as a copy of Chapter 47.64 RCW and the applicable Washington **Administrative** Code chapters to assist you in the completion of the appropriate form. The filing of the form with the MEC initiates procedures to aid you in the resolution of a dispute.

You must provide certain information on the filing forms. Make every effort to supply this information accurately. Set forth as clearly and concisely as possible the facts which you believe constitute a violation of the contract, rule or law. The information you will be required to supply **includes:**

1. Your name and address and the name and address of each party involved in the dispute.
2. A clear and concise statement of the facts which you believe form the basis for your unfair labor practice complaint or request for grievance arbitration.
3. A **listing** of the subsections of Chapter 47.64 RCW and/or Title 316 WAC, or sections of the pertinent collective bargaining agreement alleged to have been violated.
4. A statement of the remedy sought.
5. In a request for **grievance** arbitration, a statement that indicates that you have used and exhausted the grievance procedures of the appropriate collective bargaining agreement before **filing** this request, or alternatively, a reason why you did not use and exhaust the dispute resolution procedures.
6. The signature of the person filing the request for arbitration or the complaint.

Filing the request for grievance arbitration or unfair labor practice complaint with the MEC

Filing a request for grievance arbitration or unfair labor practice complaint starts the machinery by which the MEC will resolve your dispute. You must file the signed form with the **MEC office** in Olympia within the time limits set forth in the collective bargaining agreement or by rule.

Grievance request forms and unfair labor practice complaint forms may be mailed, sent by facsimile or hand-delivered to the **MEC's office** in Olympia.

A copy of the complaint form or grievance request must be sent to each party

In addition to filing the appropriate form with the MEC **office**, you must **serve** a copy of the form on each party. Proof of service of a COPY of the **appropriate** form on the other **parties** is your exclusive responsibility.

What happens as a result of your filing a dispute for resolution by the MEC?

Upon filing of a complaint charging an unfair labor practice, the **MEC** will review your complaint to determine whether the facts if true and provable, would constitute an unfair labor practice under RCW **47.64.130**. **If** the MEC determines that the facts presented by you, if true and provable, would **constitute** an unfair labor practice, a hearing examiner will be assigned to the case.

If you file a request for grievance arbitration, MEC staff will review the form for completeness, including your indication that you have **utilized** and exhausted dispute **mechanisms** provided in your contract. **Thereafter**, an arbitrator may be assigned to hear or otherwise resolve the dispute.

In either instance, MEC will notify you that formal proceedings are to be scheduled in your case, and MEC staff will contact you to schedule a hearing.

DISPOSITION OF YOUR CASE WITHOUT FORMAL PROCEEDINGS

Withdrawal, dismissal, settlements

You may withdraw your case at any time prior to the close of a hearing. You might wish to do this if you become convinced that you may not be able to prove your case. You may contact the MEC and ask to withdraw your case. Upon review, MEC will dismiss the case. A new request or complaint may be filed at a later date if additional evidence of a violation becomes available.

You may decide to settle your differences with the parties whom you have a dispute without the necessity of formal proceedings. This may be accomplished by way of a written agreement between the parties. If you settle your dispute prior to **hearing**, notify the MEC that you wish to **withdraw** your case because settlement has been reached.

A settlement affords you, as well as the other parties and the MEC., a means of bringing about a

resolution to the dispute. It is a voluntary and speedy substitute for prolonged formal action. You should always keep the possibility in mind; it may save you time, money and hard feelings. Settlements are as varied as the circumstances of your case, and no definite standards can be set down that will cover all cases.

In the firm belief that the best resolution to labor-management disputes is for the disputing parties themselves to negotiate their differences and arrive at a fair settlement, it is the policy of the MEC to encourage the parties to work toward settlement of the dispute prior to hearing.

FORMAL PROCEEDINGS BEFORE **THE** MEC

Notice of hearing

The issuance of a notice of hearing by MEC is the beginning of formal, public disposition of a case. A notice of hearing is served by the MEC **upon all** parties. Service, by restricted certified mail, is made as early as possible before the hearing, and, in any case, at least seven days before the date set for the hearing.

The notice of hearing includes the name of the case, the parties thereto, the facts upon which the MEC bases its jurisdiction, and the **facts** relating to the alleged violations. It also lists those provisions of Chapter 47.64 RCW or **Title** 316 WAC, or sections of the applicable collective bargaining agreement **alleged** to have been violated. The notice of hearing sets forth the time **and** place of the hearing of the grievance or the unfair labor practice complaint.²

Prehearing/settlement conferences

The arbitrator or hearing examiner may arrange a **prehearing/settlement** conference with the parties. Conferences may include **discussion** of the simplification of issues, the necessity of amendments to pleadings, the **possibility** of obtaining stipulations of fact or law and **other** matters that will aid in the resolution of the dispute.

The hearing

The hearing is the formal presentation of evidence. **This** takes place at the date and location set forth in the notice of hearing. The arbitrator or hearing examiner serves as judge in the proceedings and is responsible for the orderly conduct of the hearing and for **preserving** the rights of all parties. The hearing is open to the public All parties have the right to appear at the hearing in person and to be represented by counsel or by some other representative. You or your attorney or union representative may call, examine, and cross-examine **witnesses**, and may introduce into the record documentary or other evidence.

² The hearing notice in an unfair labor practice also provides a date by which each respondent may answer the charges in writing. WAC 316-45-190 and 316-45-210.

Procedure at the hearing

The hearings are conducted much like a trial in a court of law. The hearing examiner or arbitrator presides over the hearing. Proceedings are recorded by a court reporter. Witnesses are called, sworn under oath, examined and cross-examined. Exhibits are introduced. If either party disagrees with the ruling of the presiding officer with respect to the conduct of the hearing, formal objection may be made to the ruling which may **serve** as the basis for a later appeal. If you are called as a witness, it is your duty to answer all questions properly asked of you in a forthright and clear manner without withholding pertinent facts. It is a **specific** violation of Chapter 47.64 RCW to **discriminate** in any way related to your employment against an employee who has given testimony in such a proceeding.

The order of presentation of the case is determined by the presiding officer. Generally, the charging party is called upon to present its case first. A responding party will then come forward to present its defense either by contesting through its witnesses the facts presented by your witnesses, or by presenting other evidence to demonstrate that his or her action was legally justified.

Decisions

After all parties to the dispute have had the **opportunity** to present all pertinent evidence, the arbitrator or hearing **examiner** will set a date for the filing of closing briefs, and order the hearing closed. An official hearing transcript will be prepared? Upon receipt of the **official** hearing transcript and the closing briefs of all parties, the arbitrator or hearing examiner will prepare a written decision. Thereafter, the MEC will issue a decision which sets forth its findings of facts and **conclusions** of law as to violations of the law or the pertinent collective **bargaining** agreement and which orders an appropriate remedy. A decision of the MEC is **final** and binding, pursuant to RCW 47.64.280(3).

Appeals from Decisions and Orders

A party who disagrees with any aspect of a decision, findings of fact, conclusions of law, or order entered by the **Commission** may petition for review within 30 days from the date of service of such order. To appeal a decision by the MEC, a petition must be filed in the state superior court, pursuant to Chapter 34.05 RCW, the **Administrative** Procedures Act, which is the exclusive means of **judicial** review of agency action. WAC 3X-45-350 and **316-65-550** explain how to file for review of a decision by an individual hearing examiner or arbitrator.

³ A copy of the official hearing transcript is available for referral by the parties in the **MEC's** office in Olympia. If you wish to purchase a copy of the transcript, you must make those arrangements with the court reporter. The MEC does not provide copies of hearing transcripts to the parties.

MEC'S ADDITIONAL RESPONSIBILITIES

Representation Proceedings Under the MEC

Chapter **316-25** WAC provides the rules by which a petition for investigation of a question concerning representation of employees may be filed. If you have questions regarding representation proceedings, please contact the MEC **office** for information.

Petitions Before the MEC For Clarification of Existing Bargaining Units

Chapter 316-35 WAC **governs** proceedings before the MEC on petitions for **clarification** of existing **bargaining** units. If you have questions regarding the status of employees in existing WSF bargaining units, please contact the MEC office for information.

Proceedings Before the MEC Regarding Union Security Disputes

Chapter **316-75** WAC **governs proceedings** before the MEC relating to union security disputes arising between employees and employee organizations recognized as their bargaining representative.

Other Miscellaneous Dutia Performed by MEC

MEC is also responsible for assisting the unions and WSF if the parties reach impasse while negotiating labor contracts. Chapter **316-55** WAC sets forth the rules governing activities and proceedings before the MEC relative to impasse in the event the parties have not previously negotiated impasse procedures.

Finally, MEC provides **fact-finding** surveys of compensation, benefits and conditions of employment to the parties for their use in negotiating future collective bargaining agreements. The MEC **Salary** Survey Report is issued March 1st of every odd-numbered year, prior to the commencement of collective bargaining between the parties. Chapter **316-85** WAC governs proceedings before the MEC relating to the conduct of the survey and publication of its report.

WHO SHOULD YOU CONTACT FOR MORE INFORMATION ABOUT THE MEC?

*Please contact the MEC staff if you have questions about how the MEC **works** to **resolve disputes** between the Washington State **Ferries** and **ferry** system employees. The MEC **office** is open **Monday through Friday**, from **8:00 am. until 5:00 p.m.** The telephone number at the Olympia **office** is (360) **586-6354**. If a staff member is not immediate& **available** to assist you, please leave a recorded message and we **will** contact you as quickly as possible.*
